



**AGENDA ITEM  
NO. 5**

## **MEMORANDUM**

**To:** **PLANNING COMMISSION**

**Date: December 12, 2006**

**From:** **COMMUNITY DEVELOPMENT DEPARTMENT**

**Subject:** **Zoning Amendment, Subdivision and Development Agreement Applications,  
ZA-06-10/SD-05-11/DA-05-09: Del Monte – Giovanni**

### **REQUEST**

The applicant is requesting approval of a development agreement and zoning amendment to establish a precise development plan and rezone an approximate 1.08-acre site from R2(3,500) to R2(3,500)/Residential Planned Development (RPD). The applicant is also requesting approval to subdivide the site into six lots for the construction of six multi-family homes.

### **RECOMMENDATION**

Environmental Assessment: Recommend Council adoption of Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program

Application, ZA-06-10: Recommend Council approval of the zoning amendment request, subject to the findings and conditions of the attached resolution

Application, SD-05-11: Approve the tentative map, subject to the findings and conditions of the attached resolution

Application, DA-05-09: Recommend Council approval of the development agreement, subject to the findings and conditions of the attached resolution

Processing Deadline: May 6, 2007

### **BACKGROUND/ PROJECT DESCRIPTION**

The project was awarded six building allotments through the Micro Category of the RDGS for Fiscal Year 2006-07. The applicant proposes to build six modified setback dwellings on an approximate one acre site in a R2(3,500) zoning district. The site is located on the east side of Del Monte Avenue, approximately 80 feet north of Christine Lynn Drive.

## **CASE ANALYSIS**

### **Zoning Amendment**

The project site is currently zoned R2(3,500). The applicant is requesting approval of a Residential Planned Development (RPD) overlay district and the adoption of a precise development plan for the site. In accordance with Chapter 18.18 (RPD Overlay District) of the Planning and Zoning Codes, *"Relaxation of lot sizes, yards and density requirements will be permitted when, in the opinion of the planning commission and approval of the city council, the proposed development will enhance the area in which it is proposed, by exceptional design and arrangement of buildings, provision of open space and landscaping, the protection of the welfare and privacy of adjoining property, or the construction and reservation of housing units for lower income or senior households."*

As part of the six-unit development, the applicant will provide one moderate, non-restricted unit. The applicant will also improve Del Monte Avenue along the project frontage, and extend Del Monte Avenue (half street improvements) an additional 660 feet to the north. By doing so, Del Monte Avenue will be open to vehicles from Wright Avenue to Llagas Road.

In exchange for the amenities provided with the project, the applicant is requesting approval of the following site development standards for the RPD: 1) approximate 66-ft lot depth for Lots 5 and 6; 2) street side setback of 13 ft for Lot 1; 3) approximate 12-ft setback for Lot 5 along the cul-de-sac bulb frontage; and 4) approval of modified setback dwellings.

**Lot Depth** – In the R2(3,500) zoning district, the minimum lot depth standard is 85 ft. Lots 5 and 6 are less than 67 ft deep. The overall site is not wide enough to accommodate the full width of the cul-de-sac plus 85-ft deep lots on both sides of the street. Therefore, relaxation of the lot depth standard is requested as part of the RPD.

**Street Side Setback** - The minimum street side setback required in the R2(3,500) zone is 15 ft. The purpose for the larger setback is to ensure line of sight is not obstructed at the corner. The applicant proposes a 13-ft street side setback for Lot 1. The side elevation of the Lot 1 unit is 50 ft in length. The majority of the elevation (28 ft) is actually set back 20 ft or more from Del Monte Avenue. The remaining 22 ft is set back 13 ft, but is located at the rear of the home away from the corner. Therefore, line of sight would not be compromised with the proposed design.

**Front Setback** – The code requires a minimum 20-ft front yard setback in the R2(3,500) zone. The frontage for Lot 5 extends for more than half the length of the cul-de-sac, including the cul-de-sac bulb. The Lot 5 unit is set back 20 ft from the portion of the cul-de-sac that runs perpendicular to Del Monte Avenue. However, the setback is reduced to approximately 12 ft along the cul-de-sac bulb. The applicant has minimized the encroachment into the front yard by ‘stepping back’ the house along the bulb frontage.

**Modified Setback Dwellings** – In accordance with Ordinance No. 1641, N.S. and Ordinance No. 1700, N.S., modified setback dwellings may only be allowed within RPDs. Therefore, the applicant is requesting approval of an RPD to allow for the modified setback dwellings.

### **Subdivision**

The project site is approximately 1.08 acres in size. The applicant proposes to subdivide the site into six lots for the construction of six multi-family units. Lots generally range in size from 4,246 sf to 4,491 sf. However, Lot 5 is considerably larger at 6,424 sf because it contains the on-site detention pond. As a condition of the subdivision approval, a public storm drain easement will be recorded on Lot 5 to ensure continued access to and maintenance of the pond.

All six lots comply with the minimum lot size and lot width requirements for the R2(3,500) zoning district. However, as noted under the ‘zoning amendment’ discussion above, Lots 5 and 6 fall short of the minimum lot depth requirement by approximately 18 ft.

The applicant proposes to install a number of public improvements in the project area. As shown on the Site Development Plan, a planter median will be constructed within Del Monte Avenue around an existing oak tree that will be preserved. The project will also extend Del Monte Avenue in front of the project site. The extension will include two, 26-ft wide paved lanes, sidewalks, curbs and gutters. Beyond the project site and existing oak tree, the road extension will consist of full, half street improvements (32' right-of-way) from the project site and extending north for approximately 660 feet. A new stop sign controlled cul-de-sac will be constructed to provide access to the individual lots. It should also be noted that as part of the subdivision application, the applicant will provide an underground detention facility on the adjacent property to the east (APN 764-12-024) to mitigate the loss of an existing pond located on the project site that currently serves the neighboring property.

### **Development Agreement**

The applicant is requesting approval of the project development agreement. Project development agreements are required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the Measure C process and establishes the ‘commence construction’ deadline for the project. The project specific commitments are identified in Paragraph 14 of the development agreement and the ‘commence construction’ deadline is contained in Exhibit B. In accordance with Planning Commission Policy PCP-06-01, the remaining development deadlines will be approved separately by Commission Resolution.

### **Environmental Assessment**

An environmental assessment was completed for the project and two areas of potential environmental concern were identified: air quality and biological resources. The project may generate short-term air quality impacts resulting from construction activity. In order to mitigate potential air quality impacts, standard construction measures will be required as identified in the attached mitigated Negative Declaration. Implementation of the proposed project may also result in potential impacts to tree-nesting raptors and a large oak tree proposed to be retained within the Del Monte Avenue median. Mitigation measures to protect the oak tree and tree-nesting raptors have been incorporated in the mitigated Negative Declaration which will reduce potential impacts to a less than significant level.

**RECOMMENDATION**

Staff recommends adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and approval of the zoning amendment, subdivision, and development agreement applications, subject to the findings and conditions of the attached resolutions.

**Attachments:**

1. Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
2. Zoning Amendment Resolution
3. Subdivision Resolution
4. Development Agreement Resolution
5. Project Vicinity Exhibit
6. Project Site Plan

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## CITY OF MORGAN HILL

## **COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION**

**17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236**  
**Website Address: [www.morgan-hill.ca.gov](http://www.morgan-hill.ca.gov)**

## **MITIGATED NEGATIVE DECLARATION**

## **I. DESCRIPTION OF PROJECT:**

**Date:** November 1, 2006      **Application #s:** EA 05-33/ZA 06-10/SD 05-11/DA 05-09

APN: 764-12-025

**Project Title:** Del Monte-Giovanni Project

**Project Location:** The approximately one-acre project site is located on Del Monte Avenue between Wright Avenue and Llagas Road.

**Project Proponent:** Giovanni Development LLC – Dan Gluhaich, 175 East Main Avenue, Suite 130  
Morgan Hill, CA 95037

**Project Description:** The project proposes to construct six detached multi-family houses and a private street on a 1.076 acre site. The project also proposes to extend and widen Del Monte Avenue to provide vehicle access to the site.

## II. DETERMINATION

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures are included in the project, and, therefore, this **MITIGATED NEGATIVE DECLARATION** has been prepared.

### **III. CONDITIONS (Mitigation and Avoidance Measures):**

#### *A. Air Quality:*

- The proposed project includes the following mitigation measures to reduce project construction impacts to a less than significant level. The Bay Area Air Quality Management District (BAAQMD) has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall be implemented during construction of the proposed project:
  - Water all active construction areas at least twice daily.
  - Cover all trucks hauling soil, sand, or other loose materials or require all trucks to maintain at least two feet of freeboard.
  - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
  - Install gravelbags, fiber rolls, or other effective erosion control measures to prevent silt runoff to public roadways.
  - Replant vegetation in disturbed areas as quickly as possible.

#### *B. Biological Resources:*

The proposed project includes the following mitigation measure to protect the large oak tree during construction.

- A certified arborist shall oversee the construction around the tree and compaction of soils surrounding the large oak tree to ensure the survival after the roadway construction.

The project includes the following measures to avoid impacts to tree-nesting raptors:

- Tree removal, site grading and construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most raptors extends from January through August.
- If it is not possible to schedule demolition and construction between August and January, then preconstruction surveys shall be conducted by a qualified ornithologist or wildlife biologist to ensure that no nests will be disturbed during project implementation. This survey shall be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the qualified person would inspect all trees in and immediately adjacent to the impact areas for nests. If an active raptor nest is found close enough to the construction/demolition area to be disturbed by these activities, the ornithologist would determine the extent of a construction-free buffer zone (typically 250 feet) to be established around the nest for duration of breeding activities until young birds have fledged.

### **III. FINDING**

The City of Morgan Hill Community Development Director hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the initial study are included in the project.

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Kathleen Molloy Previsich  
Community Development Director

Date: \_\_\_\_\_

MITIGATION MONITORING AND REPORTING PROGRAM

DEL MONTE - GIOVANNI  
PROJECT

CITY OF MORGAN HILL

DECEMBER 2006

## P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Negative Declaration concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses these measures in terms of how and when they will be implemented.

MITIGATION MONITORING AND REPORTING PROGRAM DIANA AVENUE-LIGHT OF THE WORLD APOSTOLIC CHURCH PROJECT					
Impact	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	
<b>AIR QUALITY</b>  Construction of the proposed project could result in significant short-term air quality impacts associated with dust generation.	The Bay Area Air Quality Management District (BAAQMD) has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall be implemented during construction of the proposed project: <ul style="list-style-type: none"><li>▪ Water all active construction areas at least twice daily.</li><li>▪ Cover all trucks hauling soil, sand, or other loose materials or require all trucks to maintain at least two feet of freeboard.</li><li>▪ Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li><li>▪ Install gravelbags, fiber rolls, or other effective erosion control measures to prevent silt runoff to public roadways.</li><li>▪ Replant vegetation in disturbed areas as quickly as possible.</li></ul>	To be implemented during both the demolition and construction phases by the contractors.	A dust control program, which includes the dust control measures identified in the Negative Declaration, will be included in all contract specifications and implemented by contractors.	Community Development Department	
<b>BIOLOGICAL RESOURCES</b>  Extending Del Monte Avenue in front of the project site could impact the survival of the large oak tree.	The proposed project includes the following mitigation measure to protect the large oak tree during construction. <ul style="list-style-type: none"><li>• A certified arborist shall oversee the construction around the tree and compaction of soils surrounding the tree to ensure the survival after construction.</li></ul>	To be implemented during both the demolition and construction phases by the contractors.	All tree protection measures are on all construction documents, contracts, and project plans.	Community Development Department	

MITIGATION MONITORING AND REPORTING PROGRAM DIANA AVENUE-LIGHT OF THE WORLD APOSTOLIC CHURCH PROJECT				
Impact	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
Any loss of fertile bird eggs, or individual nesting birds, or any activities resulting in nest abandonment, would constitute a significant impact.	<p>The proposed project includes the following mitigation measures to reduce project impacts to a less than significant level.</p> <ul style="list-style-type: none"> <li>Tree removal (if necessary), site grading and construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most raptors extends from January through August.</li> <li>If it is not possible to schedule demolition and construction between August and January, then preconstruction surveys shall be conducted by a qualified ornithologist or wildlife biologist to ensure that no nests will be disturbed during project implementation. This survey will be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the qualified person would inspect all trees in and immediately adjacent to the impact areas for nests. If an active raptor nest is found close enough to the construction/demolition area to be disturbed by these activities, the ornithologist would determine the extent of a construction-free buffer zone (typically 250 feet) to be established around the nest for duration of breeding activities until young birds have fledged.</li> </ul>	<p>To be implemented within 14 to 30 days (depending on the start of construction) prior to any ground disturbing activities by a qualified ornithologist.</p>	<p>All measures are on all construction documents, contracts, and project plans.</p> <p>If active nests are encountered a report will be submitted by qualified ornithologist to the Environmental Planner of Community Development Department</p>	Environmental Planner of Community Development Department

**SOURCE:** City of Morgan Hill, *Del Monte – Giovanni Project Initial Study*, November 2006.

**RESOLUTION NO. 06- (zoning amendment)**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF MORGAN HILL RECOMMENDING  
APPROVAL TO REZONE A 1.08-ACRE SITE LOCATED  
ON THE EAST SIDE OF DEL MONTE AVE. APPROX. 80  
FT NORTH OF CHRISTINE LYNN DR. FROM R2(3,500)  
TO R2(3,500)/RESIDENTIAL PLANNED DEVELOPMENT  
(RPD) AND TO ADOPT A PRECISE DEVELOPMENT  
PLAN FOR THE CONSTRUCTION OF SIX MULTI-  
FAMILY HOMES (APN 764-12-025)**

**WHEREAS**, such request was considered by the Planning Commission at their regular meeting of December 12, 2006, at which time the Planning Commission recommended approval of application ZA-06-10: Del Monte - Giovanni; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

**SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

**SECTION 4.** The Planning Commission finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

**SECTION 5.** The Planning Commission hereby recommends approval of a precise development plan as contained in that certain series of documents date stamped December 6, 2006, on file in the Community Development Department, entitled "Milano Site Development Plan/Vesting Tentative Map" prepared by MH Engineering. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

- SECTION 6.** Approval of the Milano RPD and precise development plan shall allow the deviations identified in the list of Approved Deviations attached hereto as Exhibit "A", and by this reference incorporated herein. Standards not specifically called out shall comply with the site development standards of the R2(3,500) zoning district.
- SECTION 7.** The six multi-family homes may be constructed as modified setback dwellings. All modified setback dwellings shall comply with the provisions of Ordinance No. 1641, N.S. and Ordinance No. 1700, N.S.
- SECTION 8.** Future building additions are prohibited in any yard (front, rear, side) for which a reduced setback was approved by this RPD, unless the additions comply with the site development standards of the R2(3,500) zoning district.

**PASSED AND ADOPTED THIS 12<sup>th</sup> DAY OF DECEMBER 2006, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES:           COMMISSIONERS:**

**NOES:           COMMISSIONERS:**

**ABSTAIN:       COMMISSIONERS:**

**ABSENT:       COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

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**ROBERT J. BENICH, Chair**

**Exhibit A**  
**APPROVED DEVIATIONS**

	<b>Lot Depth</b>	<b>Front Yard Setback</b>	<b>Street Side Setback</b>	<b>Modified Setback Dwelling</b>
<b>Lot 1</b>	--	--	13'	yes
<b>Lot 2</b>	--	--	--	yes
<b>Lot 3</b>	--	--	--	yes
<b>Lot 4</b>	--	--	--	yes
<b>Lot 5</b>	66'	12' along cul-de-sac bulb; 20' along frontage perpendicular to Del Monte Ave.	--	yes
<b>Lot 6</b>	66'	--	--	yes

**RESOLUTION NO. 06- (subdivision)**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF MORGAN HILL APPROVING A SIX-LOT  
SUBDIVISION OF A 1.08-ACRE SITE LOCATED ON THE  
EAST SIDE OF DEL MONTE AVE., APPROXIMATELY 80  
FEET NORTH OF CHRISTINE LYNN DRIVE IN A  
R2(3,500)/RPD ZONING DISTICT (APN 764-12-025)**

**WHEREAS**, such request was considered by the Planning Commission at their regular meeting of December 12, 2006, at which time the Planning Commission approved application SD-05-11: Del Monte - Giovanni; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1.** The approved project is consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** Approval of this subdivision is contingent upon the City Council approval of a Residential Planned Development (RPD) overlay zoning designation as contained in Zoning Amendment application, ZA-06-10: Del Monte - Giovanni.

**SECTION 3.** An environmental initial study has been prepared for this application, and has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. A mitigated Negative Declaration will be filed.

**SECTION 4.** The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.

**SECTION 5.** The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as exhibit "A", and by this reference incorporated herein.

**PASSED AND ADOPTED THIS 12<sup>th</sup> DAY OF DECEMBER 2006, AT A REGULAR  
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES:           COMMISSIONERS:**

**NOES:           COMMISSIONERS:**

**ABSTAIN:       COMMISSIONERS:**

**ABSENT:       COMMISSIONERS:**

**ATTEST:**

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**FRANCES O. SMITH, Deputy City Clerk**

**APPROVED:**

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**ROBERT J. BENICH, Chair**

**A F F I D A V I T**

I, **Dan Gluhaich of Giovanni Development LLC**, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

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**Dan Gluhaich, Applicant**

Date: \_\_\_\_\_

## EXHIBIT "A"

### STANDARD CONDITIONS

**APPLICATION:** *Subdivision Application, S0-05-11: Del Monte -Giovanni*

THE FOLLOWING CONDITIONS SHALL BE MET PRIOR TO THE ISSUANCE OF BUILDING AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS OTHERWISE SPECIFIED IN THE CONDITIONS. APPROVAL REQUIREMENTS ARE NOT LIMITED TO THE ITEMS LISTED BELOW AND NOT ALL OF THE STANDARD CONDITIONS ARE APPLICABLE TO THE SITE OF A SPECIFIC PLANNING APPLICATION.

THOSE CONDITIONS MARKED BY AN "X" ARE APPLICABLE TO THE PROJECT APPLICATION REFERENCED ABOVE.

### COMMUNITY DEVELOPMENT DEPARTMENT

#### PLANNING DIVISION

- I. TIME LIMITS
  - A. The Site and Architectural approval granted under this Resolution shall remain in effect for one year to \_\_\_\_\_, 200\_\_\_\_\_. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. (**MHMC 18.74.250**)  
The Tentative Subdivision/Parcel Map approval granted under this Resolution shall remain in effect for two years to DEC. [REDACTED], 20008. Failure to apply for Final Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Community Development Department (parcel map)/Planning Commission (tentative map) prior to the expiration date. (**MHMC 17.20.170; 17.24.110**)  
 B. The Conditional Use Permit approval granted under this Resolution shall remain in effect for twelve (12) months to \_\_\_\_\_.  
Failure to commence the use within this term shall result in \_\_\_\_\_.
  - C. \_\_\_\_\_
- termination of approval unless an extension of time is granted with a showing of just cause prior to the expiration date. (**MHMC 18.54.070**)
  - A) \_\_\_\_\_
  - D. In accordance with Section 18.54.090 of the Municipal Code, the Community Development Department shall conduct an annual review of the approved use for compliance with specified conditions. The Department may initiate corrective action as specified in the aforementioned Code Section if necessary to ensure compliance with said conditions. (**MHMC 18.54.090**)  
Prior to approval and recordation of the final map, written certification from the Morgan Hill Unified School District shall be submitted to the Community Development Department which states that adequate school facilities are or will be capable of accommodating students generated by this project. Such letter of certification must have been issued by the School District within 90 days prior to the final map approval.
  - E \_\_\_\_\_

**II. SITE DEVELOPMENT**

A. Prior to on-site grading, the applicant shall enter into an

agreement with the City of Morgan Hill for consultant services. The City shall retain the services of a professional arborist to evaluate the condition of any on-site specimen tree(s) affected by construction activity, and recommend appropriate written specifications which will preserve such trees during and after construction. The City shall provide copies of said written specifications to the applicant, who shall assume responsibility for implementing all recommended actions contained in that document.



B. The applicant shall provide a set of Covenants, Conditions and Restrictions, Bylaws and Articles of Incorporation, for review and approval by the City Attorney prior to final occupancy or recordation of the final map. All such CC&Rs shall include the following text:

1. Common Areas/Right of Ways:

a. The Owners recognize that the use, modification and proper maintenance of the Common Area and public right-of-way(s)\* are for the benefit of all citizens of the City of Morgan Hill (City) and that the City is an intended third party beneficiary of these covenants, conditions and restrictions and may, upon notice of hearing as set forth below, exercise the same powers of enforcement as the Association.

\*Public right-of-way: Exclusive of streets dedicated to and accepted by the City of Morgan Hill

standing and the right (but not the obligation) to bring a court action against the Association and Owners to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

- c. The Notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the Common Area or public right-of-way in question. Any and all costs incurred by the City in so maintaining the Common Area or public right-of-way shall be a lien against all the properties included with the Project and shall be the personal responsibility of the Owners and the Association
- d. The entire Project and all of the properties located thereon shall be subject to the conditions and restrictions of all subdivision and other Project approvals by the City, with respect to the Project. Any changes and/or modifications to the Project and/or any Unit, including but not limited to changes to the exterior of any Unit, may be subject to review and approval of the City of Morgan Hill as may be determined by review of the Project approvals by the City of Morgan Hill.
- e. This section may not be amended without the prior written consent of the Director of Community Development for the City. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.
- f. For the purposes of this section, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of the original Declaration as first recorded with the County Recorder for Santa Clara County and by any amendment thereto, but only to the extent that such maintenance

## STANDARD CONDITIONS

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obligation or duty of maintenance is increased by such amendment.

2. Tree and Landscape Preservation: The Owners of the Units and Association shall preserve and maintain all trees and landscape on the property originally required by the approved landscape plan and shall not remove or alter any such trees or landscape from the Property without the approval of the Director of Community Development of the City of Morgan Hill.

3 Compliance with the City of Morgan Hill Conditions of Approval: It shall be the responsibility of each Owner and the Association to insure that any changes or modifications to the Project or any Unit are in compliance with the original City conditions of approval of the Project, which are hereby incorporated herein as if set forth in full.

Final site development plans shall be reviewed and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:

1. Detail depicting all concrete curbs as full formed.
2. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing. (MHMHC 18.74.370)
3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities. (MHMHC 18.50.110; 18.74.470)
4. Trash enclosures shall be constructed of a sturdy, opaque material, minimum 6 feet in height with solid view obstructing gates and shall be designed in harmony with the architecture of the building(s). In residential areas, trash enclosure areas shall require an overhead shade

✓C.

✓D.

✓E.

✓F.

Prior to recordation of the final map, the owner shall submit to the Community Development Director for his approval, a management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties.

Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval.

## STANDARD CONDITIONS

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provided throughout the development to connect dwellings or commercial/industrial buildings with parking areas, open spaces and recreational uses.

### III. BUILDING DESIGN

- A. All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 ft. or greater to match the height of any proposed equipment. (MHM<sup>C</sup> 18.74.320)
- B. Roof top lighting is not approved for any building within the project. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development. Adjustment to the lighting intensity may be required after the commencement of the use. All parking lot lighting shall be high pressure sodium.
- C. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior. (MHM<sup>C</sup> 18.74.360)
- D. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building. (MHM<sup>C</sup> 18.74.340)

- C. All units shall be provided with automatic garage door openers if driveway is less than 18 feet in depth from back of sidewalk.

- D. Prior to final map approval or issuance of a building permit, the owner shall record an appropriate deed restriction and covenant running with the land subject to review and approval by the City Attorney for reciprocal ingress/egress easements along the common driveway.

### V. LANDSCAPING

- A. Roof top lighting is not approved for any building within the project. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development. Adjustment to the lighting intensity may be required after the commencement of the use. All parking lot lighting shall be high pressure sodium.
- B. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior. (MHM<sup>C</sup> 18.74.360)
- C. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building. (MHM<sup>C</sup> 18.74.340)

- C. All units shall be provided with automatic garage door openers if driveway is less than 18 feet in depth from back of sidewalk.
- D. Prior to final map approval or issuance of a building permit, the owner shall record an appropriate deed restriction and covenant running with the land subject to review and approval by the City Attorney for reciprocal ingress/egress easements along the common driveway.

### IV. PARKING & VEHICULAR ACCESS

- A. The interior of any parking area shall be landscaped with planter areas measuring a minimum five feet in width, minimum inside dimension. Additional planters shall be provided at both ends of a row of spaces with the planter area length equal to the adjoining parking spaces. Such planters shall contain an 18" walk adjacent to parking stall (including curb width). (MHM<sup>C</sup> 18.74.550 C)
- B. Textured pedestrian pathways across circulation aisles shall be

- D. Detailed landscape planting and irrigation working drawings shall be submitted to the Community Development Department for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- C. Special landscape features such as mounding, field stones, specimen size trees, meandering sidewalks and landscaping, minimum \_\_\_\_\_ feet in width, shall be required along \_\_\_\_\_ as part of the common area improvements.

- D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by (the property owner/Homeowner's Association)

## STANDARD CONDITIONS

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provided for apartment, condominium, or townhouse projects prior to occupancy. Directory signs may also be provided for any multi-tenant commercial or industrial building. Location of the sign(s) shall be interior to the project and design of the directory sign(s) shall be approved by the Planning Division and Fire Department prior to issuance of building permits.

E. All trees within approved landscape plans shall be of a minimum fifteen gallon size. All shrubs shall be minimum 5 gallon size unless otherwise approved by the Community Development Director.

F. A soils report shall be provided with landscape plan at the building permit stage indicating agricultural suitability and soil fertility.

G. The balance of a building site not developed as part of this project approval shall be placed in landscaping acceptable to the Planning Division.

H. *A note shall be placed on the final map which shall indicate that the lot # 5 shall be used for no purpose other than for on-site storm drainage facilities and recreational amenities. All proposed trails, private open space and associated facilities shall be permanently secured with appropriate documentation (i.e., Deeds, Easements, Covenants, Conditions and Restrictions (CC&Rs), Dedication, Homeowners Association, etc.).*

I. The landscaping installed and accepted with this project shall be maintained on the site as per the approved plans. Any alteration or modification to the landscaping shall be permitted with the approval of the Director of Community Development.

## OTHER CONDITIONS

VII.

A. It is recognized that the subject structure is proposed as speculative and the ultimate use is unknown at this time. Future commercial/industrial users of this site are subject to the City's commercial/industrial performance standards and may require use permit approval.

B.

The applicant for land use approval has received notice that the issuance of a building permit to implement such land use action may be suspended, conditioned or denied where the City Council has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of Morgan Hill or to meet discharge standards imposed by the California Regional Water Quality Control Board.

C.

The City of Morgan Hill currently may not have the sewage treatment capacity necessary to serve this project. Building permit issuance will not be allowed until and unless sewer capacity has been obtained for the project.

D.

Prior to development of the subject property, the applicant shall follow the recommendations of the Northwest Information Center, Sonoma State University, regarding the investigation of potentially-significant archeological resources on the site, and shall follow recommended actions for the preservation and protection of any resources discovered during such investigation before and during construction activity.

E.

Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this conditional use permit. In addition, applicant shall pay all pre-subdivision application

## SIGNS

VI.

A. The applicants shall obtain Planning Division approval of a sign program prior to issuance of building permits. The terms of said sign program shall be included as a disclosure in all future leasing agreements affecting this parcel.

## SIGNS

VI.

B. The signs indicated on the plan set drawings are not approved with the subject site review application. Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.

## SIGNS

VI.

C. Directory monument sign(s) and location map(s) shall be

## STANDARD CONDITIONS

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tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.

✓ F. Submit two (2) signed copies of Approval Certificate/Resolution No. 06- to the Planning Division prior to issuance of building permits.

Prior to approval of the final map (or issuance of a building permit where no map is required), the property owner shall submit to the Planning Division two (2) signed notarized copies of the Development Agreement for the proposed project.

The applicant shall be subject to compliance with the mitigation measures of the project environmental assessment.

✓ G. I. After project approval the applicant shall conduct a preconstruction survey to avoid the take of individual burrowing owls. The preconstruction survey shall be conducted not more than 30 days prior to construction to assure take avoidance of burrowing owls. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).

a. If there are construction activities during the breeding season, and if burrowing owls are observed on, or within 250 feet of the project site during preconstruction surveys, a 250 foot protective buffer shall be established and monitored.

b. If preconstruction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the owls may be relocated upon approval of the CDFG once mitigation has been provided. (PLNG)

✓ J. Development under the General Plan could adversely impact undocumented historic properties, which are not protected by the proposed General Plan policy.

1. Until the historic resource inventory is updated as recommended in the General Plan building permit for alteration or demolition shall be approved for any property over 45 years. Buildings over 45 years old should be reviewed by a qualified architectural historian prior to project approval.
2. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met.

- a. Work at the location of the find will halt immediately within 30 feet of the find. If an archaeologist is not present at the time of the discovery, the City would contact an archaeologist for identification and CEQA evaluation.
- b. If the find is not significant, construction can continue. The archaeologist will prepare a brief informal memo/letter that describes and assesses the significance of the resource, including a discussion of the methods used to determine significance for the find.
- c. If the find appears significant, the archaeologist will determine if the resource can be avoided and will detail avoidance procedures.
- d. If the resource cannot be avoided, the archaeologist will develop within 48 hours an Action Plan to avoid or minimize impacts. The field crew will not proceed until the Action Plan is approved by the City. (PLNG)

HOUSING DIVISIONVII. GENERAL REQUIREMENTS

A. Relocation assistance in the form of a list of available rental units of similar price and in the same general area shall be provided each tenant, together with a relocation allowance equal to three (3) months rent at the tenant's rate in effect at the time final approval is granted. The rental list shall be updated weekly by the applicant until residences are vacated. A copy of all assistance plans shall be forwarded to the Housing Division for approval. Payment shall be made when relocation expenses are incurred or no later than the time the tenant vacates the premises. (MHMC 15.30.050)

B. The Property Owner shall enter into agreement with the City to provide at least 10% of the for sale homes for participation in a below market rate (BMR) sales program approved by the Planning Division. The BMR participation agreement shall run with the land, and the provisions thereof shall be subject to review by City Attorney prior to recordation.

The BMR participation agreement shall include the following provisions:

- Family size shall be considered when a home is offered through the BMR program. No distinction shall be made between adults and children.

- BMR units must be affordable to families at or below the county's current median income as defined by the United States Department of Housing and Urban Development;

The monthly housing cost shall include:

- unit purchase price
- current lending rates
- estimated taxes
- estimated insurance
- homeowner's association fee
- other expenses as determined by the lender

Units shall be available only to first time home buyers as defined by the BMR program and who currently reside within the County of Santa Clara.

BMR units shall be subject to resale restrictions under

individual agreements which shall be binding for a minimum of 45 years.

C. The Property Owner shall enter into agreement with the City to provide at least \_\_\_\_\_ of the units for participation in a below market rate (BMR) rental program approved by the Planning Division. The BMR participation agreement shall run with the land, and the provisions thereof shall be subject to review by City Attorney prior to recordation.

The BMR participation agreement shall include the following provisions:

Family size shall be considered when a rental unit is offered through the BMR program. No distinction shall be made between adults and children;

\_\_\_\_\_ of the BMR units upon the issuance of the certificate of occupancy must be affordable to families at very low or below the County's current median income as defined by the United States Department of Housing and Urban Development and the remaining \_\_\_\_\_ BMR units must be affordable to families at low or below the County's current median income.

Property Owner agrees not to convert units to condominiums for a period of twenty (30) years.

- Tenants will be selected from the City's waiting list.

- Property owner shall abide by the Program Guidelines incorporated herein by this reference.

D.

The project is located in the Central Commercial-Residential (CC-R) zoning district and therefore must comply with the provisions of the Downtown Replacement Housing Program (DRHP). Those provisions may require that relocation assistance and/or on-site replacement housing be provided to current or past residents of the property. The applicable provisions of the DRHP must be satisfied prior to issuance of building permits for the subject project. (MC 15.30.050; 15.330.060)

E.

Property Owner agrees to pay double the standard Housing mitigation fee.

## STANDARD CONDITIONS

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## BUILDING DIVISION

### IX. EXISTING STRUCTURES

A. Existing building(s) where an occupancy change or use occurs, shall be made to comply with current Building Code for the intended use. (UBC 3045)

B. Removal of existing sewage disposal facilities and connection to city services shall be required prior to final inspection. (MHMPC 13.24)

C. Additions to structures and/or a change in occupancy of use are required to install fire sprinklers. (MHMPC 15.08.070)

### X. GRADING

- |  |  |  |
|--|--|--|
| <p>A. Prior to issuance of building permits, the applicant shall provide contract documents for on-site improvements including comprehensive site grading and drainage plan. Said plan shall provide for exportation of excess soil material as necessary. (UBC, Appendix Chapter 33)</p> <p>B. Prior to issuance of building permits, the applicant shall provide contract documents for on-site improvements including:</p> <ol style="list-style-type: none"> <li>1) Comprehensive site grading and drainage plan. Said plan shall provide for exportation of excess soil material as necessary and controlled drainage of storm water away from building.</li> <li>2) Comprehensive erosion control plan, including hydromulching or hand-seeding methods to be used in all graded or cleared areas. Said plan shall meet the minimum standards and specifications of the Loma Prieta Resource Conservation District.</li> <li>3) All cuts and fills shall be at a 2:1 slope or less unless stabilized by a retaining wall or cribbing as approved by the City Engineer. Retaining walls that retain four feet or more measured from immediate grade shall be of concrete or masonry. (MHMPC 15.08.050)</li> </ol> | <p>XI. SITE DEVELOPMENT</p> <p>A. Prior to issuance of building permits, the applicant shall provide two copies of a soils (Geotechnical) engineering report prepared by a registered Civil (Geotechnical) Engineer. The report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading criteria for corrective measures, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes, per UBC Appendix Chapter 70. The report shall also include soil classification and foundation investigation as required by UBC Chapter 29. (UBC, Appendix 33)</p> <p>B. Prior to issuance of building permits, the applicant shall provide two copies of an engineering geology report, prepared by a registered Engineer Geologist. The report shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors. (UBC Appendix Chapter 33)</p> <p>C. Record of survey required. Lot stakes to be set by registered Civil Engineer or licensed Land Surveyor prior to issuance of building permits. (UBC 108.1)</p> <p>D. Plans for all septic tank sewer systems shall be submitted to the Santa Clara County Environmental Health Department for review and issuance of a septic tank permit. Location of the approved septic tank leach field and expansion area shall be depicted on the revised site plan as part of a final submittal. (MHMPC 13.24)</p> | <p>XII. OTHER CONDITIONS</p> <p>A. The applicant shall have an acoustical analysis prepared by a</p> |
|--|--|--|

## STANDARD CONDITIONS

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licensed professional, specifying the manner in which interior noise levels will be reduced to the required forty-five (45) dB(A). The details of noise attenuation recommended in the report will be subject to review and approval of the Chief Building Official prior to issuance of the building permit. (UBC Appendix 1208)

B. Submit minimum six (6) complete sets of working drawings and specifications. Building plans shall be drawn at a minimum 1/4" scale. Minimum sheet size shall be 18" x 24". Submit minimum - six (6) complete sets of drawings for all commercial and or industrial buildings. (UBC 106.3.3)

C. A demolition permit from the Building Division of the City of Morgan Hill is required prior to the demolition of any structure. All structures which are 50 years old or older must complete a 15 day posting requirement. All structures must obtain a permit

from the Bay Area Air Quality Control Board prior to demolition. (MHHMC 15.60)

D. Permits for new structures or additions will require compliance with the Building Security Ordinance. Requirements such as the installation of dead bolts on doors, protection methods for windows, garage door security, commercial roof opening security, lighting at all exit doors, etc. may be required. (MHHMC 15.40)

E. Permits for new structures or additions to existing structures will require the installation of fire sprinklers. (MHHMC 15.08.070)

F. All copper tube for water piping shall have a weight of not less than type "L". (MHHMC 15.20.050)

## STANDARD CONDITIONS

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## PUBLIC WORK DEPARTMENT

### ENGINEERING DIVISION

#### XII GENERAL

A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. Should the applicant propose the use of development and/or construction standards for any improvement and/or land uses, which are different than those presently set forth in the City's codes and ordinances, such alternative standards must be presented and approved by the Director of Public Works. The applicant shall cause Standard Specifications and Standard Drawings to be prepared in a format to be approved by the Director of Public Works. (MHM 17.32.080)

F. Enter into a Subdivision Improvement Agreement with the City of Morgan Hill to cover required improvements. (MHM 17.32.160)

G. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. (MHM 17.20.340; 17.20.350)

H. The applicant shall submit a complete traffic study of the area affected by the proposed project. This study shall be subject to review and approval by the Public Works Director prior to the issuance of any City permits. All mitigating improvements outlined in the study shall be installed by the applicant at his expense. (MHM 17.32.090)

I. Prior to final map approval or issuance of a building permit, the applicant shall pay  $\frac{1}{2}$  the cost of an improved median on portion covering the project frontage. Said cost shall be determined by the City Engineer. (MHM 3.44.020)

J. A map for assessment district reapportionment and reassessment spread shall be prepared and submitted to the City Engineer for review, approval and City submittal to the County Assessor. Said map shall be recorded concurrent with subdivision/parcel map. (MHM 17.20.350)

K. Pursuant to City Ordinance 982, the subject property will have reimbursement obligation to the City for lands acquired for street purposes and streets improved should those lands/street improvements abut or be included within subject property. (MHM 12.02.120 B).

L. IMPACT FEE INCREASE-The City of Morgan Hill, pursuant

B. The applicant shall have a Final Map prepared by a registered engineer or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be as required by the Public Works Department. (MHM 17.20.200)

#### C.

The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the subdivision and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the Director of Public Works prior to submittal of Final Map. (MHM Sec 17.32.080)

#### D.

Obtain necessary encroachment permits from City of Morgan Hill/County of Santa Clara/ State of California/ Santa Clara Valley Water District, and provide guarantee covering off-site improvements. (MHM 12.08.040 A)

E. Modification of existing map to show (Storm Drain System) (Pavement widths) (Curve Radius) (Existing Utilities) on (MHM 17.20.040)

## STANDARD CONDITIONS

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to City Code Chapter 3.56 has established ten specific categories of impact fees to finance the cost of improvements required by new development. The City Council has chosen to implement certain fees, withhold implementation of certain fees, and stage the implementation of certain fees. City Code Chapter 3.56.050 provides for automatic annual (July 1) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. Those fees which a developer elects to defer shall be subject to the fees in effect at the time of development of a lot (issuance of building permit). The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours.

### XIV. SANITARY SEWER SYSTEM

A. The applicant, at his or her expense, shall have a registered civil engineer prepare a complete sewer system capacity study of the on- and off-site sewer system which will service the project (both upstream and downstream). The study shall meet the approval of the Director of Public Works. All needed improvements shall be installed by the applicant. No downstream overloading of existing sewer system will be permitted. (MHMHC 17.32.090)

B. The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on Site and Del Monte. Collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye branches and laterals, and separate sewer taps to each lot. These are to be installed by the developer. (MHMHC 17.32.020 C)

C. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. (MHMHC 13.24.080)

### STORM DRAIN SYSTEM

A. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the Director of Public Works. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. (MHMHC 17.32.090)

B. The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map. All storm drain improvements shall be constructed to the satisfaction of the Director of Public Works. (MHMHC 17.32.020 B)

C. Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Whereas, on-site

to City Code Chapter 3.56 has established ten specific categories of impact fees to finance the cost of improvements required by new development. The City Council has chosen to implement certain fees, withhold implementation of certain fees, and stage the implementation of certain fees. City Code Chapter 3.56.050 provides for automatic annual (July 1) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. Those fees which a developer elects to defer shall be subject to the fees in effect at the time of development of a lot (issuance of building permit). The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours.

### XV. STREET IMPROVEMENTS

A. The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with both the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the Director of Public Works. All street improvements shall be constructed to the satisfaction of the Director of Public Works. The timing of the improvements will be determined by the City. (MHMHC 17.32.060)

B. Installation and dedication of street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting on Site and Del Monte, in conformance with City of Morgan Hill requirements. (MHMHC 17.32.060)

C. Dedication of a total of 30 feet from center line of public right-of-way on Del Monte. (MHMHC 17.28.010)

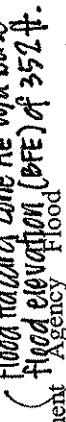
D. Dedication of the required corner cutoff at the intersection of \_\_\_\_\_ (MHMHC 17.28.010)

## STANDARD CONDITIONS

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D. Retention facilities shall be designed to a 100 year storm capacity. Items of construction shall include, but not be limited to Installation of storm line extension on surface and site and Del Monte subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. (MHMPC 17.32.080)

- D. Prior to final map approval the applicant shall complete the following to the satisfaction of the Santa Clara Valley Water District and Director of Public Works.
1. Storm drain calculations to determine detention pond sizing and operations.
  2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
  3. Storm Water Pollution Prevention Plan.

E. Since the developed portion of this site encompasses more than 1 acres, a Storm Water Pollution Prevention Plan (SWPPP) will be required as a provision of the state's General National Pollutant Discharge Elimination System Storm Water Permit for Construction Activities. The SCVWD requests a copy of the SWPPP for their information (SCVWD). 

Current Federal Emergency Management Agency Flood Insurance Maps show the site is located in ~~Zone X, an area subject to less than 1 foot of flooding~~. SCVWD recommends that the lowest floor of any building be constructed a minimum of ~~one foot above the potential depth of flooding or two feet above existing ground level~~ to be free from flooding (SCVWD).

F. Land use for the hydrology of the PL-566 channel improvement project for this site is single family. Land use of greater intensity, as proposed, will require mitigation of the increased runoff due to development. Mitigation measures, such as a detention facility, will need to remain in place indefinitely after the PL-566 channel improvements are completed, or until a regional detention facility or additional channel improvements are constructed. Calculations for the sizing of the proposed detention facility and an analysis of the impacts in the event of a one percent flood should be provided for review of the SCVWD (SCVWD).

WATER SYSTEM

A.. The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the Director of Public Works. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the Director of Public Works and dedicated to the City. (MHMPC 17.32.090)

B.. Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with the SCVWD and either be maintained or abandoned in accordance with District standards.

C.. Installation of water line extension on site and Del Monte (MHMPC 3.44.010)

D.. Provide separate water services and meters for each lot. These are to be installed by developer. (MHMPC 17.32.020 D)

E.. Should the City determine that additional water storage capacity is required, the applicant shall pay a share of any necessary improvement costs. The timing and amount of payment (developer's proportionate share) may be based on City-wide usage) shall be determined by the Public Works Director. (MHMPC 3.44.010)

### OTHER CONDITIONS

A.. The owner shall dedicate all necessary utility easements. Each requirement shall be determined by the Director of Public Works, and shall be accompanied by appropriate legal descriptions. (MHMPC 17.28.010)

B.. The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the Director of Public Works. (MHMPC 17.32.020 E.1)

The final map on all major subdivision (5 or more lots) shall be approved by the City Council prior to issuance of a grading

C..

## STANDARD CONDITIONS

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permit. For minor subdivision (4 lots or less), the final map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. (MHM<sup>C</sup> 17.20.380; 17.24.210)

D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by the Homeowner's Association.

✓ E. Final landscape plans shall be submitted with and included as part of the improvement plans for the subdivision. (MHM<sup>C</sup> 17.08.090)

**OFFICE OF JOINT POWERS PRETREATMENT**

**XVIII. COMMERCIAL AND INDUSTRIAL BUILDINGS**

- A. Restaurants and food preparation facilities shall install grease interceptors. The type, size and location of said interceptors shall be to the approval of the Public Works Director and the Pretreatment Office.
- B. Installation of a sewer test manhole in lieu of a property line clean-out, shall be provided for each building, in accordance with standard city specifications. (**MHMC 13.20.270**)
- C. Where a septic tank system is proposed, a copy of the approval permit from the Santa Clara County Environmental Health Department shall be filed with the Office of Joint Powers Pretreatment prior to issuance of a building permit.

## STANDARD CONDITIONS

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## FIRE DEPARTMENT

### SITE DEVELOPMENT

(A) To prevent building permit delays, the developer shall pay all required fees to the Public Works Dept. ASAP. If hydrant shown as existing on sheet 2 is w/m 25' off from end of cul-de-sac no additional hydrant is required.

XIX. Required Fire Flow. Required fire flow for this project is 1000 GPM at 20 psi residual pressure. The required fire flow is available from area water mains and fire hydrant(s) which are spaced at the required spacing. (UFC Appendix III-A) **\*Area calculations required to issue fire flow requirements**

✓ A. Fire Hydrant Location Identifier: Prior to project final inspection, the general contractor shall ensure that an approved ("Blue Dot") fire hydrant location identifier has been placed in the roadway, as directed by the fire department.

✓ C. Automatic Fire Sprinkler System Required. Buildings requiring a fire flow in excess of 2,000 GPM shall be equipped throughout with an approved automatic fire sprinkler system. The fire sprinkler system shall be hydraulically designed per National Fire Protection Association (NFPA) Standard #13, 1994 Edition. (UFC 1003.2.2 as amended by MHHMC 15.44.040) \* **Area calculations I. required to issue sprinkler requirements.**

D. Final Required Fire Flow. Required fire flow may be reduced up to 50% in buildings equipped with automatic fire sprinkler systems but, can be no less than 1,500 GPM. Therefore, the final required fire flow is GPM at 20 psi residual pressure. This flow shall be taken from any two fire hydrants, on or near the site so long as they are spaced at a minimum spacing at 250 feet. (UFC Appendix III-A, Section 5)

✓ E. Public Fire Hydrant(s) required. Provide 1 public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and the Water Company. Maximum hydrant spacing shall be 500 feet and the minimum single flow hydrant shall be 1000 feet. The required calculations will be made prior to applying for building permit, provide ~~as already in place, include~~ civil drawings showing location of all hydrants with the building permit submitted. (UFC 903.2) **serving the site. (SEE NOTE ① ABOVE)**

F. Private Fire Hydrant(s) Required. Provide 1 private on-site fire hydrant(s) installed per NFPA Std. #24, at location(s) to be determined by the Fire Department. Maximum hydrant spacing shall be \_\_\_\_\_ feet and the minimum single

flow hydrant shall be \_\_\_\_\_ GPM at 20 psi residual pressure. Prior to design, the project civil engineer shall meet with the fire department water supply officer to jointly spot the hydrant locations. (UFC 903.2)

Required Fire Flow Option (Single Family Dwellings). Provide required fire flow from fire hydrants spaced at a maximum of 500 feet OR provide an approved fire sprinkler system throughout all portions of the building. The fire sprinkler system shall conform to National Fire Protection Association Standard #13D, 1994 Edition, and local ordinance requirements. (UFC 903.2)

H. Water Supply for Fire Protection (Single Family Dwelling). Provide a water tank of \_\_\_\_\_ 000 Gallons capacity and one \_\_\_\_\_ fire hydrant. Installations shall conform with Fire Department Standard Details and Specifications W-1. (UFC 903.2)

Required Hydrant Installation(s). Hydrants shall be installed and spaced along the new or replacement water main installation(s) at a maximum spacing of \_\_\_\_\_ feet. Provide hydraulic calculations to show that required fire flow can be provided. (General Order 103)

J. Private on-site Fire Service Mains and Hydrants. Installations shall conform to National Fire Protection Association Standard #24, and Fire Department Standard Details and Specifications W-2. (UFC 903.2) A separate installation permit from the Fire Department is required.

K. Timing of Required Water Supply Installations. Prior to the commencement of combustible construction, the required Fire Service(s) and Hydrant ~~and Water Supply~~ installations shall be in place, inspected, tested and accepted by the Fire Department unless otherwise approved in writing by the Fire Marshal. Bulk construction materials ~~will~~ not be delivered to the construction site until installations are completed as stated above. Clearance for building permits may be held until installations are completed. (UFC 901.3) **, tested and accepted.**

L. Location of Required Fire Protection Systems. Equipment Location of Fire Hydrants, Fire Sprinkler Systems) Control

## STANDARD CONDITIONS

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Valves (PIV / OS&Y), Fire Department Connections (FDC) and Fire Alarm Equipment shall be coordinated with the Fire Department and the Project Planners. (UFC 1001.7.1; 1001.8)

driveway width. If provided, all locks shall be fire department approved. Installations shall conform with Fire Department Standard Details and Specifications G-1. (UFC 902.2.4.1)

M. Review of this Development proposal is limited to acceptability of site access and water supply as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

N. Review of these plans does not release the developer, architect, or contractor of the responsibility for the corrections of mistakes, errors or omissions contained therein.

O. This record contains standard wording for developmental review comments. The section(s) may be copied and pasted into other documents to save time and improve accuracy. Use of a standard format and standard wording has been requested by the cities and recommended by their respective city/town attorneys.  
**PARTS ARE LOCATED AT 97-001-0004.**

P. Fire Apparatus (Engine) Access Roads Required. Prior to the commencement of combustible construction, an access roadways with a paved all weather surface and a minimum unobstructed width of 20 feet, vertical clearance of 13 feet, 6 inches shall be provided, with minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%, unless otherwise approved in writing by the Fire Marshal. Installations shall conform with Fire Department Standard Details and Specifications A-1. (UFC 902.2.2)

Q. Fire Department (Engine) Roadway Turn-around Required. Prior to the commencement of combustible construction the applicant shall provide an approved fire department engine roadway turnaround with a minimum radius of 36 feet outside and 23 feet inside unless otherwise approved in writing by the Fire Marshal. Installations shall conform with Fire Department Standard Details and Specifications A-1. Cul-de-sac diameters shall be no less than 72 feet. (UFC 902.2.2.4)

R. Emergency Gate/Access Gate Requirements. Open gates shall not obstruct any portion of the required access roadway or

S. Fire Lane Marking Required. Provide marking for all roadways within the project. Markings shall be per fire department specifications. Installations shall also conform to Local Government Standards and Fire Department Standard Details and Specifications A-6. (UFC 901.4.2)

Parking Along Roadways. The required width of fire access roadways shall not be obstructed in any manner. Parking shall not be allowed along roadways less than 28 feet in width. Parking shall be allowed along one side of the street for roadways 28-35 feet in width. For roadways equal to or greater than 36 feet, parking will be allowed on both sides of the roadway. Roadway widths shall be measured face to face of curb. Parking spaces are based on an 8 foot wide space. (UFC 902.2.4.1)

U. Required Plans and Permits. Plans for fire apparatus access roads and fire hydrant systems shall be submitted to the Fire Department for review and approval prior to construction. Permits are required for the installation of all Private Water Supply, Tank, and Hydrant systems and must be issued to contractors prior to the start of installation of such systems. (UFC 901.2.2.1, 902.2.2.2)

V. Required Access to Water Supply Hydrants. Unless otherwise approved in writing by the Fire Marshal prior the issuance of building permit, Portions of the structure(s) are greater than 150 feet of travel distance from the centerline of the roadway containing public fire hydrants. Provide an on-site fire hydrant OR provide an approved residential fire sprinkler system throughout all portions of the building. (UFC 903.2)

W. Required Access to Buildings. Portions of the structure(s) are greater than 150 feet of travel distance along an accessible travel path from an approved fire apparatus access roadway or driveway. Provide an approved fire apparatus roadway/driveway and approved turn-around OR provide an approved type residential fire sprinkler system throughout all portions of the building. (UFC 902.2.1, 902.2.2.4)

## STANDARD CONDITIONS

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- X. Fire Department Key Box Required. The building shall be equipped with a permanently installed emergency access key lock box (Knox), conforming to Fire Department Standard Detail and Specification sheet K-1. At time of final inspection, access keys shall be provided to the fire department. (UFC 902.4)

- Y. Fire Apparatus (Engine) Access Driveway Required. Provide an access driveway with a paved all weather surface and a minimum unobstructed width of \_\_\_\_\_ feet, vertical clearance of 13 feet, 6 inches, minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%. Installations shall conform to Fire Department Standard Details and Specifications D-1. (UFC 902.2.2)

- Z. Fire Department (Engine) Driveway Turn-around Required. Provide an approved fire department engine driveway turn-around with a minimum radius of 36 feet outside and 23 feet inside. Installations shall conform with Fire Department Standard Details and Specifications D-1. (UFC 902.2.4)

- AA. Location of Required Fire Protection System(s) Equipment. Location of Fire Hydrants, Fire Sprinkler System(s) Post Indicator Valves (PIV), Fire Department Connections (FDC) and Fire Alarm Equipment shall be coordinated with the Fire Department and the Project Planners. (UFC 1001.7.1, 1008.1)

- BB. Access to Buildings/Landscaping Requirements. Landscaping shall not obstruct Fire Department ladder access to buildings. Building Permit submittals shall include a landscape drawing which reflects the location of all landscaping. The plan shall show how Fire Department ladder access will be provided around all buildings. Provide approved walkways on all sides of the building(s) leading from the fire access roadway to the exterior openings of the building(s). (UFC 902.3.1)

- CC. Timing of Required Roadway/Driveway Installations. Prior to the commencement of combustible construction, the required access roads ~~roadways/driveways~~ installations, up through first lift of asphalt, shall be in place, inspected, and accepted by the Fire Marshal. Bulk combustible construction materials shall not be delivered to the construction site until installations are completed as stated above. During construction, emergency access roads shall be maintained clear and unimpeded. Issuance of building permits may be withheld until installations are completed. (UFC 901.3) Temporary access roads may be approved on a one by case basis.

- DD. Flagged Lots. Flagged lots shall conform with all access and water supply requirements in accordance with Fire Code Article 9. Contract Fire Department for applicable means of compliance. (District Policy)

- EE. Timing of Required Driveway Installations. Prior to the commencement of combustible construction the required driveway installations shall be in place, inspected, and accepted by the Fire Department unless otherwise approved in writing by the Fire Marshal. Bulk combustible construction materials may not be delivered to the construction site until installations are completed as stated above. Clearance for building permits also may be held until installations are completed. (UFC 901.3)

- FF. Fire Apparatus (Ladder Truck) Access Roads Required. Provide access roadways with a paved all weather surface and a minimum unobstructed width of 30 feet, vertical clearance of 13 feet, 6 inches, minimum circulating turning radius of \_\_\_\_\_ feet outside and \_\_\_\_\_ feet inside, a maximum slope of 10% and vehicle loading of \_\_\_\_\_ pounds. (UFC 902.2.1)

- GG. Fire Ladder Truck Set Up Area(s) Option. Provide Fire Department Ladder Truck Set Up Areas with a minimum unobstructed width of 30 feet and minimum length of 60 feet. Area shall support 75,000 pounds of gross vehicle weight. Area shall be paved or other engineered surfaces may be used with Fire Department approval. (UFC 902.2.2.1)

- HH. Secondary Access Required. Provide a secondary access point. Installation and Design of Secondary Access shall conform to Fire Department Standard Details and Specifications A-4. (UFC 902.2.1)

- II. Bridges (Driveways). The bridge shall be designed for a live load of 40,000 pounds as stated in Fire Department Standard Details and Specifications D-1 and in accordance with Article 90 of the Fire Code. (UFC 902.2.2.5)

Premises Identification. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting

JJ.

## STANDARD CONDITIONS

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the property. Numbers shall contrast with their background and be a minimum of four inches in height. (UFC 901.4.4)

KK. Building Code Review. Building Code review will be conducted upon receipt of a plans submittal and Building Permit Application from the local building department having jurisdiction.

LL. Hazardous Materials Compliance Review. Hazardous Materials Compliance review is not completed in the Development Review Process. Questions regarding Hazardous Materials may be directed to (408)378-4010 ext. 20.

MM. Review of Street Improvement Plans for Approved or Disapproved (as applicable). State reason for disapproval.

NN. The proposal presented under this application is acceptable to the Fire Department. Prior to performing any grading, demolition, construction or building modifications, the applicant shall make an application to, and obtain from the Building and Fire Department all necessary permits. The requirements or conditions, if stated above, shall be incorporated into the project drawings submitted for Building and Fire Department review.

OO. No Fire Department Requirements or Conditions. For the application submitted. Subsequent submittals will be reviewed for Fire Department compliance upon receipt.

PP. Preliminary Review Only. The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete Building Permit Application and Plan Submittal that clearly shows all intended grading, demolition, construction or building modifications.

QQ. To prevent plan review and inspection delays, the Fire Department Developmental Review Conditions contained within this standard conditions checklist shall be restated as "notes" on all pending and future plan submittals, and any referenced diagrams shall be reproduced onto the future plan submittal.

RR. All new commercial building shall comply with standard specification SI-7 for construction site fire safety.

SS. All comments from review \_\_\_\_\_ are still in effect.

TT. Fire Sprinklers are not required; however, the Developer/Contractor/Owner Builder shall provide an automatic fire sprinkler system as an option to the buyer. (UFC 1003.2.2 Exceptions)

## STANDARD CONDITIONS

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## POLICE DEPARTMENT

### SITE DEVELOPMENT

XX.

#### A.

The applicant shall comply with applicable provisions of the City's building security ordinance. Exterior lighting shall comply with criteria specified in the Design Review Ordinance. (MHMPC 18.74.370)

B.

The common main entrance door to a multi-family residential building shall be coupled with a voice intercom and electric door controls for each living unit to monitor control of visitor access to the building's interior. There shall be no master keying of residential units.

C. On directories used in a multiple family dwelling, the residents listed shall be by alphabetical listing only and shall not correspond to numbering of dwelling unit. (MHMPC 15.40.410)

D.

Where electronic security gates are provided to a development, a voice intercom or phone and electric gate control shall be provided. Gate location shall be designed to provide adequate area for turn around of vehicles.

following protective devices:

- Iron bars of at least one-half ( $\frac{1}{2}$ ) inch round or one (1) inch x one-quarter (1/4) inch flat steel material no more than five (5) inches apart and securely fastened; or
- Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches secured with non-removable type screws. (MHMPC 15.40.250)

C.

All hatchway openings shall be secured with the following protective devices:

- If the hatchway is of wooden material, it shall be covered on the inside with at least sixteen (16) gauge sheet steel, or its equivalent, attached with screws.
- The hatchway shall be secured from the outside with a slide bar or slide bolt with a minimum of one (1) inch throw. The use of a crossbar or padlock must be approved by the Fire Department.
- Outside hinges on all hatchway openings shall be provided with non-removable pins using pin-type hinges. (MHMPC 15.40.280)

D.

All air duct or air vent openings exceeding eight (8) inches x twelve (12) inches on the roof or exterior walls of any building shall be secured by covering the same with either of the following:

- Iron bars of at least one-half ( $\frac{1}{2}$ ) inch round or one (1) inch x one-quarter (1/4) inch flat steel material, spaced no more than five (5) inches apart and securely fastened; or
- Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches and secured with non-removable type screws.

If the barrier is on the outside, it shall be secured with galvanized round-head through bolts of at least three-eighths (3/8) inch diameter on the outside. (MHMPC 15.40.290)

### BUILDING DESIGN

XXI.

A. Building shall be pre-wired to provide a hard wire burglar alarm system. This shall include any windows or doors at ground level and including any windows capable of being reached without ladders from the building's exterior. The wire shall be laid in conduit. This condition does not include the actual alarm system, but only the pre-wiring for desired hookup at a later date.

B.

All exterior transoms, glass skylights, and other openings of glass which are accessible from any surface on the premises shall be constructed of burglary-resistant glass or equally resistant glasslike material or secured on the inside with the

**PACIFIC GAS & ELECTRIC (PG&E)**

**XXII. UTILITY ACCESS**

- A. Development plans shall provide for unrestricted utility access and avoid encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities. Examples of activities which could have an impact on PG&E facilities include permanent/temporary changes in grade over or under the facilities; construction of structures within or adjacent to PG&E easements; and planting of certain types of vegetation over or underneath gas and electric facilities respectively. Developers shall be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate the proposed development (PG&E).

**XXIII. OTHER CONDITIONS:**  
*(see next page)*

**XXIII. OTHER CONDITIONS:**

1. The subject site is located within a Flood Hazard Zone. Homes shall be constructed above the base flood elevation (approximately 352 ft), and the project shall be subject to compliance with the Flood Damage Prevention Chapter of the Zoning Code (PLNG).
2. Revise the Preliminary Grading Plan to identify the location of all walls and include the top and bottom elevations for each wall segment (PLNG).
3. A private storm drain easement shall be recorded over the detention pond on Lot 5 for continued access to and maintenance of the pond (PLNG).
4. The modified setback dwellings shall be subject to compliance with the provisions of Ordinance No. 1641, N.S. and Ordinance No. 1700, N.S. (PLNG).
5. Identify the location of the moderate, non-restricted unit on all future plans (PLNG).
6. Applicant shall provide full half street improvements for 660 feet of street right-of-way for the balance of the unimproved portion of Del Monte Avenue from the north end of Tract 8791 (Christine Lynn Drive) to the southern end of Tract 5719 of Del Monte Village. Del Monte Avenue is a collector street per the current general plan; therefore, the required right-of-way width shall be 32 feet south of the center line of Del Monte (Note: the southern 30 feet of Del Monte has been dedicated per instrument 3879895 for APN 764-21-027 and 764-20-074). Applicant shall provide letters from current property owner along Del Monte stating intent to work with developer, allow improvements, provide additional 2 feet right-of-way, and grant 10 feet Public Service Easement along proposed Del Monte frontage (PW).
7. Applicant shall provide full 64 feet wide street improvement along Del Monte Road frontage (PW).
8. Applicant shall mitigate the existing on-site detention pond which services the adjacent property to the northeast (APN 764-12-024) by providing an underground detention facility on the property of APN 764-12-024. Applicant shall provide letter from adjacent owner of APN 764-12-024 that the proposed underground detention facility will be allowed (PW).
9. Applicant shall provide onsite detention pond for the subdivision. Maintenance of detention pond shall be required of the owner of Lot 5 or by formation of a Home Owners Association for the purpose of maintenance of the pond. Should the developer elect to have the future owner of lot 5 maintain the detention pond, notice shall be recorded against the property (PW).
10. As required by the State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, construction activity resulting in a land disturbance of one acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, file a complete Notice of Intent (NOI) package and develop a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the General Permit prior to the commencement of soil disturbing activities. The SWRCB will issue a NOI Receipt Letter assigning a Waste Discharger Identification (WDID) number to the construction site. Copies of the NOI Receipt Letter and SWPPP shall be forwarded to the Public Works Department for review. The SWPPP shall be submitted with the improvement plans (PW).

**STANDARD CONDITIONS**

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- 11. Obtain an encroachment permit from the Public Works Department prior to commencement of any work in the City's right-of-way or in connection with the City's utility system (PW).
- 12. Public Works fees are required for this project and shall be paid prior to the issuance of a building permit (PW).
- 13. Applicant shall satisfy all Measure C Commitments per MMC-04-05 of the project (PW).
- 14. Applicant will provide off-site safety improvements valued at \$3,300 per unit based on the Safe Walking Route to School Study, or any other improvements equal to \$3,300 per unit to be determined by the Morgan Hill Unified School District. (MMC 18.78.210.B.3.a) (PW).
- 15. Applicant will contribute \$1,100 per unit to the off-site Storm Drain Improvement Fund in addition to payment of standard fees. (18.78.240.B.2.e) (PW).
- 16. Applicant will pay park land in-lieu fees. (18.78.250.B.1) (PW).
- 17. Applicant will pay the lesser of triple park fees or \$6,600 per unit. (18.78.250.B.6) (PW).
- 18. The project CC&Rs shall be reviewed and approved by the Building Division for common/shared systems (BLDG).
- 19. The developer shall pay double Housing Mitigation Fees, in accordance with the Measure C commitment, prior to issuance of the first permit (HOUSING).
- 20. The site is located along the watershed boundary of West Little Llagas Creek and Fisher Creek. The project property, located on Panel 1 of the City of Morgan Hill Federal Insurance Rate Map, is in a flood hazard Zone AE with a Base Flood Elevation (BFE) of 352 feet. To comply with federal flood insurance regulations, the lowest finished floor and highest adjacent grade of any building shall be at or above the BFE (SCVWD).
- 21. The SCVWD is aware that flooding occurs during more frequent events such as 3-year storms. The detention system shall detain the difference between the pre- and post-100-year site runoff as well as frequent events such as 3-year, 5-year, and 10-year. Due to the limited space available, the use of an oversized storm drain system for detention is suggested (SCVWD).

**RESOLUTION NO. 06- (development agreement)**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MORGAN HILL RECOMMENDING  
APPROVAL OF DEVELOPMENT AGREEMENT  
APPLICATION DA-05-09: DEL MONTE - GIOVANNI  
FOR APPLICATION MMC-04-05: DEL MONTE -  
GIOVANNI (APN 764-12-025)**

**WHEREAS**, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

**WHEREAS**, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded six (6) building allotments for application MMC-05-03: Del Monte - Giovanni; and

**WHEREAS**, said development agreement request was considered by the Planning Commission at their regular meeting of December 12, 2006, at which time the Planning Commission recommended approval of development agreement application, DA-05-09: Del Monte - Giovanni.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT.** The Planning Commission hereby recommends to the City Council, adoption of the Development Agreement for MMC-04-05: Del Monte - Giovanni attached to this Resolution as Exhibit A.

**PASSED AND ADOPTED THIS 12<sup>TH</sup> DAY OF DECEMBER 2006, AT A REGULAR  
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES:           COMMISSIONERS:**

**NOES:           COMMISSIONERS:**

**ABSTAIN:       COMMISSIONERS:**

**ABSENT:       COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

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**ROBERT J. BENICH, Chair**

## **EXHIBIT A**

### **RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103**

Recorded at the request of  
and when recorded mail to:

City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037

### **RESIDENTIAL DEVELOPMENT AGREEMENT**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by  
and between **Giovanni Development LLC**, under the Agreement, ("Property Owner") and the  
CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of  
the State of California (the "City").

### **RECITALS**

This Agreement predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
- B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;
- C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;
- D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);
- E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On \_\_\_\_\_, 2006, the City Council of the City of Morgan Hill adopted Ordinance No. \_\_\_\_\_, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on \_\_\_\_\_, 2007.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

(a) "City" is the City of Morgan Hill.

(b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.

(c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.

(d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation

Exhibit "B" - Development Review and Approval Schedule

Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On March 1, 2005, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MMC-04-05: Del Monte - Giovanni, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of six multi-family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time

requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Multi-Family Low and zoning classification of R2(3,500), the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following School features in the development:

- (i) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

- (ii) Property owner will provide off-site safety improvements near a MHUSD school valued at \$3,300 per unit including installation of sidewalks and pathways along Del Monte Avenue to Wright Avenue and along Wright Avenue to Monterey Road, or any other improvements equal to \$3,300 per unit to be determined by the MHUSD.

- (i) Property Owner agrees to include the following Open Space improvements in the development:

- (i) Property Owner agrees to purchase two (2) transferable development credits (TDCs) for every 25 dwelling units, subject to this development potential transfer mechanism. Based on six (6) allotments, the purchase of 0.48 TDCs is required. Payment of the 0.48 TDCs shall be provided in the form of an in-lieu open space fee in an amount satisfactory to the City Council, and shall be collected on a per unit basis at time of building permit issuance. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(j) Property Owner agrees to include the following Public Facility features in the development:

- (i) The project shall meet all standard requirements for design and construction of public facilities.
- (ii) The project drainage shall be consistent with the City's storm drain system.
- (iii) Project storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works.
- (iv) Applicant will contribute \$1,100 per unit to the off-site storm drain improvement fund, in addition to payment of standard fees.
- (v) Applicant will provide the following public facility or pedestrian improvements on or adjacent to the project in excess of standard requirements. The cost of the public improvements shall be equal to or greater than \$4,400 per unit:
  - Improve standard half street across Mosunic property along west side of Del Monte Avenue. The proposed improvements shall include at a minimum 20' pavement, curb and gutter.

(k) The Property Owner agrees to provide the following Park and Recreation improvements:

- (i) The applicant will pay the lesser of triple the required in lieu park fees or \$6,600 per unit.

(l) Property Owner agrees to include the following Housing Needs in the development:

- (i) Project shall provide one unit as a moderate, non-restricted dwelling. The final sales price (at close of escrow) for the moderate rate unit will be based on HUD income limits for a family of 4 at the closing date.
- (ii) Project will pay double the standard housing mitigation fee computed at ten percent of the total project (including replacement units).
- (iii) Minimum Interior standard finishes will be as follows:
  - All closets shall have doors
  - Interior doors to be raised panel type or same as market rate
  - Door hardware to be brass finish or the equivalent
  - Appliances shall be major brand name
  - Microwave with an exhaust vent shall be installed over the range.

- Kitchen counters shall be white ceramic tile
- Kitchen cabinets shall be stained wood with white melamine interiors
- Units will be roughed in for AC including electrical and line set.
- Basic alarm system to secure all accessible openings to the home
- Carpet in bedrooms, hallways, family rooms
- Linoleum or tile in entry, bathrooms kitchens
- Laminate flooring may be substituted for carpet or linoleum
- Electric garage door opener

(m) Property Owner agrees to include the following **Quality of Construction** features in the development:

- (i) All homes will have EPA "Energy Star" labeled windows with low-e coatings and vinyl or metal frames.
- (ii) Installation of a high efficiency gas furnace of 90 percent efficiency rating or greater in all dwelling units.
- (iii) Provides two separately zoned high-efficiency heating systems in units over 3000 square feet, and units less than 3000 square feet whose floor plans allow effective dual-zoning.
- (iv) At least 60 percent of the dwelling units in the project will be dual-zoned and all units will include the installation of high efficiency gas furnaces with 90 percent efficiency rating or greater.
- (v) Installation of air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher in all dwelling units.
- (vi) Recirculating hot water system with demand pumping.
- (vii) Installation of cast-iron drainage pipes.
- (viii) Installation of future ready wiring concepts such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines.
- (ix) Class A roof covering.
- (x) Glued and screwed sub-floors.
- (xi) TJI floor joists on each floor framing.
- (xii) Pre-plumb gas lines to dryer along with 220 volt outlet.
- (xiii) All external walls wrapped with minimum 3/8" CDX plywood.
- (xiv) Use of porches or balconies for any area viewed from public right-of-way for every unit.
- (xv) Use at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc.
- (xvi) Provides a consistent level of architectural relief and detailing on all four building elevations.

(n) The Property Owner agrees to provide the following **Safety and Security** improvements:

- (i) Provides fire escape ladders for upper floor bedrooms and one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, and one additional extinguisher for each additional 1,500 square feet of floor space or fraction thereof.
- (ii) Provides a first aid kit with a poison control document to be installed in the kitchen area of the home.
- (iii) Provide automatic earthquake shutoff valves in all units.
- (iv) Provide outdoor lighting to meet all police department specifications.
- (v) Install illuminated address numbers for each unit and painted reflective curb numbers where possible.
- (vi) Provide double deadbolt systems at all exterior doors with automatic motion sensor switches.
- (vii) Noncombustible siding is used on all of the units and comprises at least 75 percent of the siding of an individual unit.
- (viii) Installation of an intrusion, fire alarm and heat detector system, monitored by a central station and which meets City ordinance.
- (ix) Provides residential fire sprinkler systems according to NFPA Chapter 13D specifications.
- (x) Hardwired carbon monoxide detection device or devices with battery backup. The installation of the devices is to be located per manufacturer's requirement with at least one detector per floor of the residence.

(p) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(q) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
Property Owner:	Giovanni Development LLC c/o Dan Gluhaich 175 E. Main Avenue, Suite 130 Morgan Hill, CA 95037

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

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JANET KERN  
City Attorney

J. EDWARD TEWES, City Manager

Attest:

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IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

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**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,  
MUST BE ACKNOWLEDGED BY A NOTARY)**

**EXHIBIT "A"**

**DEVELOPMENT ALLOTMENT EVALUATION**

**MMC-04-05: Del Monte - Giovanni**

(See Entire Documents on File in the  
Community Development Department - City Hall)  
CITY OF MORGAN HILL

**EXHIBIT "B"**

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**DEVELOPMENT SCHEDULE MMC-04-05: DEL MONTE - GIOVANNI  
FY 2006-07 (6 allocations)**

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**I. COMMENCE CONSTRUCTION:**

FY 2006-07 (6 units)

06-30-2007

Failure to commence construction by the date listed above shall result in the loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 3 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

**EXHIBIT "C"**

**LEGAL DESCRIPTION  
MMC-04-05: Del Monte - Giovanni**

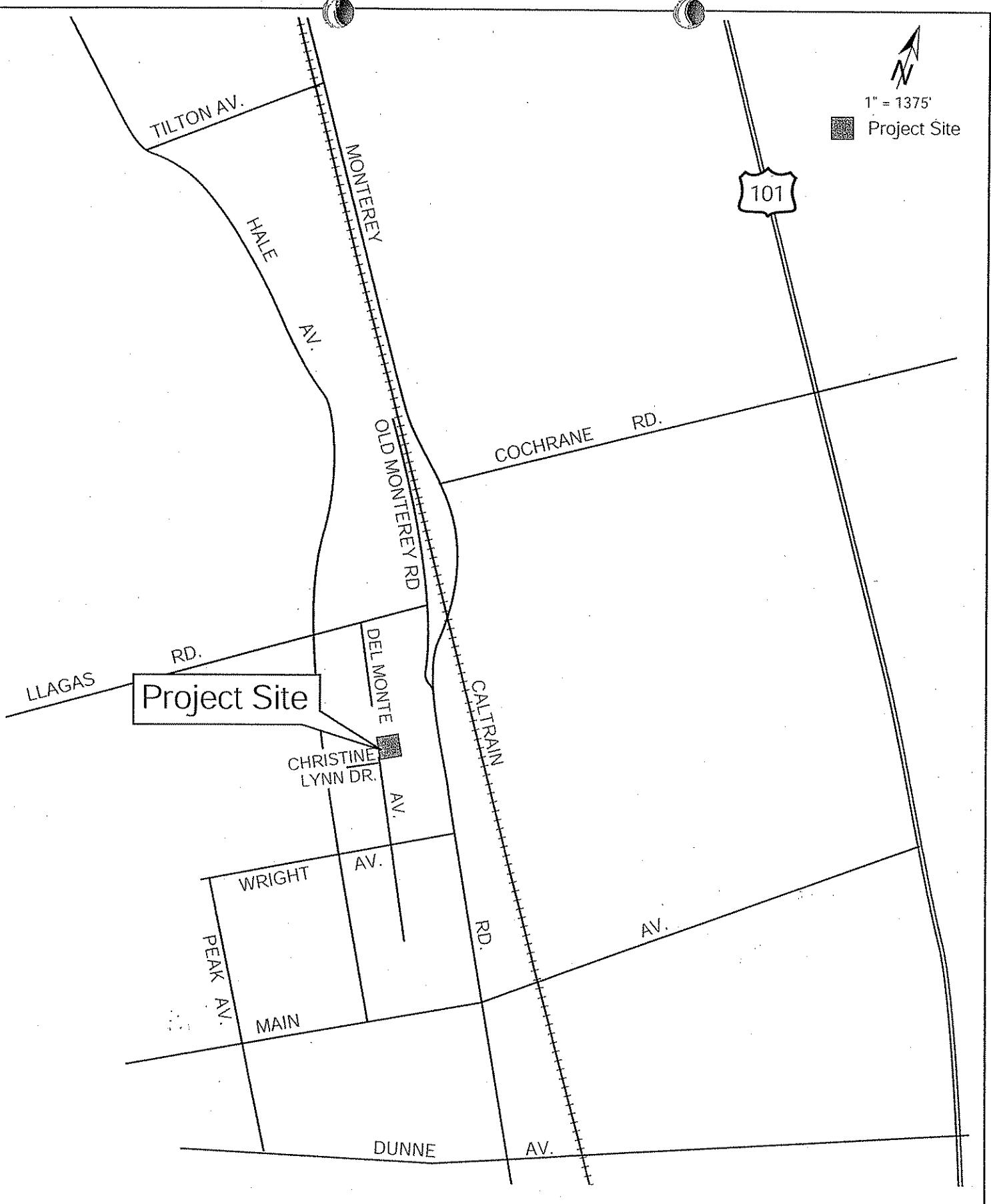
The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

Parcel 2, as shown on PARCEL MAP filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 12, 1998, in Book 709 of Maps, Pages 46 and 47.

APN: 764-12-025

ARB: 770-1-5.02

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VICINITY MAP

FIGURE 2

